

THE COMPLIANCE CONNECTION

REGULATORY NEWS FOR VIRGINIA MORTGAGE COMPANIES
STATE CORPORATION COMMISSION - BUREAU OF FINANCIAL INSTITUTIONS

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The Compliance Connection is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage and industrial loan association licensees, and other interested parties. It is the licensee's responsibility to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, VA 23218-0640 or via email at bfquestions@sc.virginia.gov.

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2018 License Renewal Information

All Virginia mortgage lender, mortgage broker, mortgage branch, and mortgage loan originator licenses granted before November 1, 2017 will expire on December 31, 2017 if they have not been renewed prior to the expiration date. The NMLS 2018 Streamlined Renewal Process began on November 1, 2017. All licensees are encouraged to submit their renewal requests through NMLS as soon as possible. The Bureau of Financial Institutions cannot guarantee that renewal requests submitted after December 12, 2017 will be processed prior to the end of the year. License-specific renewal requirements and detailed filing instructions can be viewed on the NMLS Resource Center.

Please note that mortgage company licensees shall not engage in Virginia business as a mortgage lender or broker after December 31, 2017, unless the required renewal is obtained. This prohibition also applies to branches and MLOs that did not obtain renewal by the deadline. Conducting Virginia business prior license renewal is a violation and grounds for regulatory action pursuant to Chapters 16 & 17 of the Code of Virginia.

Did You Apply for the Correct License(s)?

The Commission issues two types of mortgage company licenses -- mortgage broker and mortgage lender licenses. Section 6.2-1600 of the Code of Virginia (Code) defines each type of license as:

Mortgage broker means any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others.

Mortgage lender means any person who directly or indirectly originates or makes mortgage loans.

It is important to note that if your company wishes to have dual authority, meaning you wish to be able to engage in business as a mortgage broker and mortgage lender, you must apply for and obtain both the mortgage broker and mortgage lender licenses.

Examiners have found several instances where a company licensed solely as a mortgage lender also acted as a mortgage broker, or vice versa, without first obtaining approval to act as a mortgage broker, as required by § 6.2-1601 of the Code. Acting as a mortgage broker or mortgage lender without first obtaining the required authority is subject to civil penalties of up to \$2,500 for each occurrence (each loan made or brokered without the required license is subject to a \$2,500 penalty), pursuant to § 6.2-1624 of the Code.

If you have questions about your company's license authority, please contact the Bureau's Licensing Section at (804) 371-9690.

Highlights of MC Regulation Changes

In the last issue of this newsletter, we provided some general information about the changes to the Mortgage Regulation that became effective on May 15, 2017. This article will provide additional details about some of the changes that have prompted questions from the industry. Review the Regulation at: <http://www.scc.virginia.gov/docketsearch#caseDocs/136444>

10 VAC 5-160-10 Definitions

- “bona fide employee” is defined as an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person. The term shall not include an individual who is concurrently employed by two or more persons that are engaged in business as a mortgage lender or mortgage broker. The change specifically prohibits a bona fide employee of a mortgage company from working for more than one licensee.
- “lead generator” is defined as “a person who engages in a form of marketing activity in which the person collects and transmits a prospective borrower’s contact information and minimal information pertaining to potential mortgage loans. A person shall not be considered a lead generator if the person collects a prospective borrower’s social security number or sufficient personal information to enable a mortgage lender or mortgage broker to evaluate, in whole or in part, the prospective borrower’s creditworthiness” (NOTE: a person involved in this type of activity is considered to be a mortgage broker).
- “mortgage broker” is amended to state that persons who act as (1) a lead generator or (2) noteholder, or servicer acting on behalf of a noteholder, that negotiate the modification of a mortgage loan in its portfolio, do not need to be licensed as a mortgage broker as long as they are not also engaged in any activities that would require a mortgage broker license.
- “stockholder” for purposes of § 6.2-1616 of the Code of Virginia was revised to include a member of a limited liability company.

10 VAC 5-160-25 Books, Accounts and Records

- Loan records may be maintained electronically, as long as they are readily available for examination and the licensee complies with UETA and the E-SIGN Act. Note: the written agreement specified in § 6.2-1616 B 4 (contract for compensation) must be maintained in the form in which it was originally provided to and executed by the borrower.
- Licensees must maintain a mortgage loan transaction journal that includes specific information that is listed in the Regulation for each application received. This journal can be kept in an electronic format.

10 VAC 5-160-30 Commitment Agreements and Lock-in Agreements

- Commitment agreements (if provided and accepted by the applicant) must now include the name of the mortgage lender and must be signed by a person authorized to sign the agreement on behalf of the lender. A previously required disclosure for this agreement was amended to now state that when a rate and points are not locked, the loan will be made at the lender’s prevailing rate and points for such loan *three days prior to settlement* (the disclosure previously said the loan would close at the prevailing rate and points for such loan as of the time of closing.)
- Lock-in agreements (if provided to borrowers) must now include the name of the lender or mortgage broker issuing the lock-in agreement on behalf of the lender. A lock-in agreement must include a statement that any terms not locked in are subject to change until *three days prior to settlement* (this disclosure previously said terms not locked in were subject to change until *settlement*).

10 VAC 5-160-40 Schedule of Annual Fees

- The quarterly MCRs required to be filed in NMLS by all mortgage company licensees are now utilized to determine annual loan volume for assessment purposes. NOTE: licensees must also file annual reports of financial condition via NMLS pursuant to 10 VAC 5-160-90 D.

10 VAC 5-160-90 NMLS

- Mortgage company licenses (along with any approved office licenses) will expire at the end of each calendar year unless renewed on or after November 1 of the same year. Licenses or any approved locations that are not renewed will be deemed to be closed and noted as such in NMLS. Note: Conducting business under a non-renewed license (MC or approved office) may be subject to regulatory action pursuant to §§ 6.2-1622 of 6.2-1624 of the Code of Virginia.



License Update

The following is a list of companies and individuals that have been barred, had their license revoked, had an application denied, or paid a fine or civil penalty since May 8, 2017. This list should be helpful to keep track of companies with which you do business. These lists are accurate as of November 6, 2017. Call the Bureau if you have a question concerning a recent denial or regulatory action taken by the Commission.

Persons Barred from Employment, Management or Control of any Licensee (pursuant to § 6.2-1620 of the Code of Virginia)

Vijay K. Taneja – order entered July 5, 2017. Mr. Taneja pled guilty to, and was convicted of, the felony of conspiracy to launder money in violation of 18 U.S.C. § 1956 in the U.S. District Court for the Eastern District of Virginia.

Revocation Orders

The following licenses were revoked for failure to pay the annual assessment required by § 6.2-1612 of the Code of Virginia:

MC – 4722 American Mortgage Brokers, LLC
MC – 2178 American Standard Mortgage, LLC

MC – 3624 Johnny Carr
MC – 6627 OneCity Mortgage, LLC



Settlement Orders

MC – 1562 Washington Home Mortgage, LLC—order entered May 24, 2017. In lieu of revocation the licensee agreed to pay \$15,000 for violations of §§ 6.2-406, 6.2-1612, and 6.2-1614 of the Code of Virginia and 10 VAC 5-160-50, 10 VAC 5-160-60, and 10 VAC 5-160-90 of the Commission's Rules Governing Mortgage Lenders and Brokers and agreed to engage a third party or hire a compliance officer to review the licensee's Virginia loans for compliance, and to ensure the licensee pays its annual fee and keep its NMLS record current.

William S. Nunemaker – order entered May 26, 2017. Paid \$2,500 for failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Neighborhood Lender, Inc. (MC - 5553), in violation of § 6.2-1608 of the Code of Virginia.

MC - 3261 Ocwen Loan Servicing, LLC – order entered September 29, 2017. The findings from a multi-state examination revealed violations of 10 VAC 5-160-20 (1) (iii) and 10 VAC 5-160-20 (9) of the Commission's Rules Governing Mortgage Lenders and Brokers, 10 VAC 5-160-10 et seq. The licensee provided false, misleading or deceptive information to borrowers through improper reconciliation of borrower accounts and by failing to comply with all state and federal laws and regulations applicable to the conduct of the licensee's business. In lieu of license revocation, the licensee agreed to (i) cease and desist from violating § 6.2-414 and Chapter 16 of Title 6.2 of the Code and associated Rules, and (ii) comply with Exhibit A, which is attached to the Commission's order.

MC – 4455 Federal Hill Mortgage Company, LLC – order entered October 4, 2017. Paid \$5,000 for violations of 10 VAC 5-160-50 C and 10 VAC 5-160-90 D of the Commission's Rules Governing Mortgage Lenders and Brokers.

MC – 5733 RESMAC, Inc. – order entered October 4, 2017. Paid \$2,500 for violations of 10 VAC 5-160-50 C and 10 VAC 5-160-90 D of the Commission's Rules Governing Mortgage Lenders and Brokers.

Robyn Graves – order entered October 31, 2017. Paid \$2,500 for failing to obtain Commission approval prior to acquiring 25% or more of the ownership of Success Mortgage, L.L.C. (MC – 1919), in violation of § 6.2-1608 of the Code of Virginia.

Virginia Mortgage License Details

Ever wonder how many other mortgage companies and MLOs there are? Below is information on the trends in licensing over the past several years:

Mortgage Companies	As of 10/10/14	As of 10/5/14	As of 10/22/17
Mortgage Brokers	368	376	370
Mortgage Lenders	149	177	175
Mortgage Lenders/Brokers	230	238	251
Total MC Licensees	747	791	796
MLOs (not including inactive)*	10,051	14,776	15,056
*553 MLO license applications pending; 3,242 Approved/Inactive MLOs (as of 10/22/17)			



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